

Decision 05-03-009 March 17, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Kerman Telephone Co. (U 1012 C)  
pursuant to Public Utilities Code Section 851  
through 854 for authority to sell a Warehouse and  
Related Land.

Application 04-06-022  
(Filed June 18, 2004)

**OPINION ADOPTING SETTLEMENT AGREEMENT**

**Summary**

We grant the Motion to Accept Settlement Agreement (Motion)<sup>1</sup> filed on November 24, 2004, by Kerman Telephone Company (Kerman) and the Office of Ratepayer Advocates (ORA) relating to Kerman's Application (A.) 04-06-022 seeking Commission authority to sell land and a warehouse located at 15061 West C Street, Kerman, California to its parent company, Sebastian Enterprises, Inc. (Sebastian). In so doing, we authorize Kerman to sell the land and warehouse for \$120,000, and direct Kerman to record the gain on sale in a memorandum account pending our decision in the gain on sale Rulemaking (R.) 04-09-003.

The Motion was filed on behalf of the settling parties: Kerman and ORA. In granting the Motion, we find that the settling parties are fairly representative of all affected interests in this proceeding, and pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, the Settlement Agreement is

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<sup>1</sup> See Attachment 1 to this Decision.

“reasonable in light of the whole record, consistent with law, and in the public interest” as required by Rule 51.1(e).<sup>2</sup>

The Settlement Agreement addresses the stipulation among the Settling Parties regarding recording of the gain on sale, treatment of any additional gain on sale if the land and warehouse are subsequently sold within five years of this decision, ratemaking treatment of any newly purchased land similar to the land being sold within a five-year period of this decision, and ratemaking treatment of the cost of any lease or other land use incurred by Kerman to provide similar utility services as the land being sold.

In adopting the Motion, we conclude that the Settlement Agreement resolves all of the disputed issues in this proceeding. Furthermore, the Settlement Agreement provides numerous benefits and protections to ratepayers. First, ratepayers benefit as the land and warehouse are removed from rate base, and ratepayers no longer pay a return on that portion of the rate base. Second, ratepayers are compensated if the land is resold during the next five years for more than the sales price, suggesting that the land has been undervalued in this transaction. Third, ratepayers will not be harmed if in the future Kerman is required to purchase similar land for utility services. Finally, there is the elimination of uncertainty inherent in litigation, in a manner that is acceptable to the parties.

### **Background**

Kerman filed A.04-06-022 on June 18, 2004, seeking Commission authority to sell the land and the warehouse. The land and the warehouse will be sold to

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<sup>2</sup> All references are to the Commission’s Rules of Practice and Procedure unless otherwise noted.

Kerman's parent company Sebastian, for a price of \$120,000. On July 22, 2004, ORA filed a protest of the Application. Shortly thereafter, Kerman and ORA state that they entered into settlement discussions, and at a prehearing conference (PHC) on November 4, 2004, parties informed the assigned Administrative Law Judge (ALJ) that they had an agreement in principle. At the PHC, Kerman and ORA agreed to provide a motion for settlement agreement before December 1, 2004. Subsequent negotiations between Kerman and ORA produced the Motion filed November 24, 2004.

No other responses to the Application were received.

### **Description of the Settlement Agreement**

The Settlement Agreement provides the following resolution for the sale of the land and warehouse: Kerman may sell the land and warehouse to Sebastian for \$120,000. The gain on sale of \$71,295<sup>3</sup> shall be treated in accordance with the outcome of R.04-09-003. The gain shall be tracked in a memorandum account accruing interest based on a three-month commercial paper rate. If Sebastian sells the land within five years, any additional gain on sale above \$120,000 shall be treated in the same manner as the gain on sale realized by Kerman. For a period of five years after the sale of the land, should Kerman purchase additional land that is similar to the land being sold, the newly purchased land must be placed into rate base at the same value as the land being sold. Also for a period of five years after the sale of the land, the cost of any lease or other use of land incurred by Kerman to provide utility services shall not exceed the cost to

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<sup>3</sup> The net book values of the land and building are \$46,382 and \$2,323, respectively, or a total of \$48,705.

ratepayers as if Kerman had not sold the land that is the subject of the Application.

### **Criteria for Approving All Party Settlement**

We approve all-party settlements provided the following criteria are present *in addition* to criteria applicable to all settlements, which we discuss below. All-party settlements must meet the following requirements:

*The settlement must command the unanimous sponsorship of all active parties to the proceeding.* Because Kerman and ORA are the only parties to this proceeding, this criterion plainly is met.

*The sponsoring parties must be fairly representative of the affected interests.* Kerman's proposed sale of the land and warehouse will affect its customers. ORA represents the interest of those customers and advocates for all customers,<sup>4</sup> thus this criterion is met.

*No term of the settlement may contravene statutory provisions or prior Commission decisions.* Nothing in the Settlement Agreement we approve contravenes statutory provisions or prior Commission decisions, and thus the settlement meets this criterion.

*The settlement must convey to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.* The Settlement Agreement we approve sufficiently states the treatment of the gain on sale for the warehouse and land, including future treatment of the gain on sale under other reasonable outcomes.

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<sup>4</sup> Cal. Pub. Util. Code § 309.5.

### **Criteria for Approving Settlements**

In addition to meeting the all-party settlement criteria detailed above, the Settlement Agreement must meet the criteria applicable to all settlements. These criteria for approval are identified in Rule 51.1(e). That rule states:

The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

#### **The Settlement is Consistent with Law and Prior Commission Decisions**

Pub. Util. Code § 851 permits the proposed sale of the land and warehouse provided that Kerman obtains prior Commission approval. In addition, the gain on sale will be treated consistent with whatever policy the Commission adopts in its gain on sale proceeding, R.04-09-003.

#### **The Settlement Agreement is Reasonable in Light of the Record as a Whole**

The record shows that the gain on sale associated with the sale of the land and warehouse will be treated consistent with Commission policy as adopted in R.04-09-003. Furthermore, any concerns over the future usefulness of the subject land have been addressed through the conditions agreed to by the parties.

#### **The Settlement is in the Public Interest**

Permitting Kerman to sell the land and warehouse will allow Kerman to avoid the risk and liabilities associated with the ownership and maintenance of such an old facility. Second, the land and warehouse will be removed from rate base, which benefits ratepayers as they will no longer pay a return on this investment. Third, conditions imposed under the Settlement Agreement ensure that ratepayers will be compensated if the land is resold in the near term (five years) for more than the sale price in this transaction, suggesting that the

land is undervalued in this transaction. Fourth, the conditions imposed under the Settlement Agreement ensure that ratepayers will not be harmed if, in the future, land of a similar nature is required for Kerman's utility operations. Finally, the Settlement Agreement eliminates the uncertainty inherent in litigation and provides for the resolution of the issues in this case in a manner acceptable to Kerman and ORA, enabling the parties to avoid costly and resource-intensive litigation while still protecting ratepayers interests. For these reasons, and because the accord reached by the parties is a comprehensive agreement that provides protection to Kerman and ratepayers, it is in the public interest.

#### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

#### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Kerman requests authority to sell land and a warehouse to its parent company, Sebastian, for a net gain on sale of \$71,295.
2. All parties have agreed to settle this case.
3. The Settlement Agreement is the product of extensive discussion between the Settling Parties. Kerman and ORA entered into these discussions after a complete review of the filed Application.

4. Kerman and ORA fairly reflect all affected interests in this proceeding. Kerman represents the interests of shareholders. ORA represents the interests of Kerman's customers.

5. The Settlement Agreement provides that the gain on sale of \$71,295 shall be tracked in a memorandum account accruing interest at the three-month commercial paper rate pending the outcome of the gain on sale rulemaking, R.04-09-003.

6. The Settlement Agreement provides that if Sebastian sells the land within five years, any additional gain on sale shall be treated in the same manner as the gain on sale realized by Kerman.

7. The Settlement Agreement provides that if within the next five years Kerman purchases additional land similar to the land being sold, then the newly purchased land must be placed into rate base at the same value as the land being sold.

8. The Settlement Agreement provides that for a period of five years after the sale of the land, the cost of any lease or other use of land incurred by Kerman to provide utility services shall not exceed the cost to ratepayers as if Kerman had not sold the land that is the subject of the Application.

9. Conducting a further proceeding, and litigating the issues in this case, would unnecessarily consume valuable resources of the Commission and Kerman.

### **Conclusions of Law**

1. The Settlement Agreement fully resolves and settles all disputed issues, among the parties concerning Kerman's application in this proceeding.

2. The Settlement Agreement we approve herein does not contravene the law.

3. Because the Settlement Agreement sufficiently states the outcomes for the gain on sale of the land and warehouse, the Settlement Agreement creates no regulatory uncertainty.

4. Pub. Util. Code § 851 permits the sale of the land and warehouse requested by Kerman, provided Kerman obtains prior Commission approval.

5. The Settlement Agreement is reasonable in light of the whole record, consistent with law, consistent with prior Commission decisions, and in the public interest.

6. This decision should be effective today so that the Settlement Agreement may be implemented.

## **O R D E R**

### **IT IS ORDERED** that:

1. The November 24, 2004 Motion of Kerman Telephone Company (Kerman) and the Office of Ratepayer Advocates (ORA) for approval of the Settlement Agreement dated November 19, 2004 is granted and the Settlement Agreement is approved without modification.

2. Kerman shall record and track the gain on sale of the warehouse and land, the subject of the application, in a memorandum account accruing interest based on the three-month commercial paper rate in conformance with the attached Settlement Agreement.

3. Kerman shall file an Advice Letter addressing the gain on sale within sixty days after the Commission determines the appropriate disposition of the gain on sale in Rulemaking 04-09-003.

4. Application 04-06-022 is closed.

This order is effective today.



Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN GRUENEICH  
Commissioners

[ATTACH 1 to BMD A0406022](#)